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No. 4-99-0496

IN THE APPELLATE COURT

OF ILLINOIS

FOURTH DISTRICT

PEOPLE OF THE STATE OF ILLINOIS, Plaintiff-Appellee,	)
vs.	)
LEANNE CHILDS, Defendant-Appellant.	)

Appeal from the Circuit Court of Sangamon County
No. 98CF428
The Honorable Leo J. Zappa, Jr.,
Judge Presiding.

ORDER

On March 24, 1999, a jury convicted defendant, Leanne Childs, of first degree murder of Aaron Calcara (Calcara) (720 ILCS 5/9-1 (a) (1) (West 1998)) and first degree murder of Michael Nelson (Nelson) (720 ILCS 5/9-1 (a) (1) (West 1998)). On May 25, 1999, the trial court sentenced defendant to natural life in prison (730 ILCS 5/5-8-1 (a) (1)(c) (ii) (West 1998)). Defendant appeals, arguing that (1) the trial court erred when it granted the State's motion in limine barring defendant from presenting evidence of defendant's involuntary intoxication under section 6-3(b) of the Criminal Code of 1961 (720 ILCS 5/6-3 (b) (West 1998)); (2) the trial court erred in denying defendant's motion in Limine thereby allowing the state to introduce evidence of alleged statements that defendant made to Melanie Thurmond; (3) the trial court erred by refusing to instruct the jury on the offense of involuntary manslaughter;

(4) the trial court abused its discretion in admitting testimony as to defendant's alleged drug transactions; and (5) the trial court erred in restricting defense counsel from cross-examining witness Brenda House concerning a statement made by defendant, when such statement was admissible under the doctrine of completeness and would help explain defendant's actions. We affirm.

The record reflects that on the afternoon of May 1, 1998, individuals driving on a rural roadway in Sangamon County, Illinois, observed defendant pulling the bodies of Calcara and Nelson from a vehicle owned by defendant's father. Calcara and Nelson suffered multiple gunshot wounds to the head.

McKindle Warfield (Warfield,) testified that he had known defendant for "about two years." On April 29, 1998, defendant told Warfield that she believed Calcara had stolen $850 from the pocket of defendant's coat. Warfield believed that the money was "drug money." He had witnessed defendant sell marijuana on numerous occasions and "five to ten times" during the week before the murders. Warfield agreed to confront Calcara, alleging the money was Warfield's, in an effort to get the money back. Defendant drove Warfield to the home of Rhett Hasara (Hasara). Hasara gave Warfield a handgun and bullets. Defendant drove Warfield to her parents, home, where they found Calcara. Warfield confronted Calcara about the missing money, showing Calcara the gun, "like I was meaning business." Calcara did not have the money. Warfield left the home.

On May 1, 1998, defendant approached Warfield at Lanphier High School. Defendant asked Warfield for the handgun. She told Warfield that Calcara admitted taking her

money, that he "was bragging on it." Calcara had given the money to Nelson. Defendant told Warfield that she needed the gun to get her money back. Warfield gave defendant the handgun and bullets.

Brenda House (House), a detective with the Sangamon County Sheriff's department, testified on cross-examination by defense counsel regarding a statement made to House by defendant. Defendant told House that, on May 1, 1998, defendant offered to take Calcara and Nelson "somewhere they wanted to go." The three individuals, and defendant's infant son, first drove to a public aid office in Springfield, Illinois. Defendant told House that she gave Calcara the handgun. Calcara drove the vehicle and Nelson sat in the front passenger seat. Defendant sat in the backseat behind Calcara and next to her infant son. While driving in a rural area, Nelson pointed the gun at defendant and told her that he was going to kill her. Nelson believed that defendant told police officials that he was responsible for a series of car burglaries. Nelson told defendant to remove her shirt. Defendant told House that she believed that she was going to be sexually assaulted by Calcara and Nelson. Nelson placed the gun on the console of the vehicle. Defendant told House that she grabbed the gun and that she and Nelson struggled briefly. Defendant then shot Nelson three times in the head and Calcara two times in the head. Defendant pulled the victims, bodies from the vehicle and drove to Decatur, Illinois. Police officials later arrested defendant.

A jury convicted defendant of first degree murder of Calcara and first degree murder of Nelson. The trial court sentenced defendant to natural life in prison. This appeal followed. We will discuss additional relevant facts in the context of the issues raised on appeal.

Defendant first argues that the trial court erred when it granted the State's motion in limine barring defendant from presenting evidence of defendant's involuntary intoxication under section 6-3(b) of the Criminal Code of 1961 (720 ILCS 5/6-3(b) (West 1998)). Specifically, the trial court barred Robert Chapman (Chapman), a medical doctor of psychiatry, from expressing the opinion that defendant suffered an altered mental state as a result of involuntarily induced phencyclidine (PCP) intoxication at the time of the murders. "The admissibility of evidence at trial is a matter within the sound discretion of the trial court, and that court's decision may not be overturned on appeal absent a clear abuse of discretion." People v. Illgen, 145 Ill. 2d 353, 364, 583 N.E.2d 515, 519 (1991).

The record reflects that on March 24, 1999, the State filed a motion in limine to bar Chapman from expressing the above opinion. In an offer of proof on March 22, 1999 (we note the inconsistency of the dates of record), Chapman testified that defendant told him she had smoked marijuana with Calcara and Nelson on the afternoon of the murders. Defendant told Chapman that on the last of those occasions "she felt that she must, they had a gun and were threatening her and she felt intimidated, so she began to smoke it." After defendant smoked the marijuana, Calcara and Nelson told her that "there was PCP in there." Chapman testified that "[tlhe only information I have that [defendant] smoked PCP is from her, which is what she told me." At the conclusion of the offer of proof, the trial court stated in part:

> "The two key cases for the record are People v. Clifford Anderson, 495 N.E.2d 485, and People v. Britz, 528 N.E.2d 703.

> The [c]ourt after hearing the offer of proof made by Dr. Chapman in this case finds the facts in this case more in line with People v. Britz.
>
> Clearly in this case Dr. Chapman has relied substantially, if not totally on the [d]efendant's statements, self-serving, regarding the alleged substance.
>
> ***
>
> [T]he involuntary intoxication motion in limine is allowed."

In People v. Britz, 123 Ill. 2d 446, 528 N.E.2d 703 (1988), the defense's experts did not rely on any other reports in assessing defendant's alleged substance disorder. They did not refer, either before or after their examination of defendant, to reports made by the officers, the statements of witnesses, or the reports from the rehabilitative center or centers in which defendant allegedly received treatment. They did not speak to friends or members of his family. The bases of their opinions relied substantially on the statements of defendant. The supreme court did not believe that Wilson v. Clark, 84 Ill. 2d 186, 417 N.E.2d 1322 (1981), cert. denied, 454 U.S. 836, 70 L. Ed. 2d 117, 102 S. Ct. 140 (1981), in combination with People v. Anderson, 113 Ill. 2d 1, 495 N.E.2d 485 (1986), cert. denied, 479 U.S. L012, 93 L. Ed. 2d 713, 107 S. Ct. 658-(1986), allowed for such an extension of the rule.

> "To allow an expert to rely solely on self-serving statements made by the defendant to determine his sanity defense permits this court to circumvent and abrogate the intent and meaning of the Federal Rules of Evidence and the rules announced in Wilson and

> Anderson. If this court were to allow such testimony, it would open the door for a defendant to tell his side of the story without the possibility of being cross-examined." Britz, 123 Ill. 2d at 462, 528 N.E.2d at 711.

In another case, Melecosky v. McCarthy Brothers Co., 115 Ill. 2d 209, 503 N.E.2d 355 (1986), the supreme court followed the holdings in Wilson and Anderson. The supreme court allowed the testimony of the plaintiff's expert witness, a nontreating physician. Melecosky, 115 Ill. 2d 214-15, 503 N.E.2d at 358. Unlike this case, the expert based part of his opinion not only on the plaintiff's subjective statements but also on the medical history as recorded by the plaintiff's previous physicians and his own tests. In this case, the expert relied substantially, if not totally, on defendant's self-serving statements regarding her alleged involuntary intoxication. Thus, this court finds that the trial court did not err. Moreover, even if we were to find error, the evidence of defendant's guilt was overwhelming and the alleged error would be harmless.

Defendant next argues that the trial court erred in denying defendant's motion in limine, thereby allowing the State to introduce evidence of alleged statements that defendant made to Melanie Thurmond (Thurmond). The record shows that the State identified Thurmond as an additional witness on March 11, 1999. (The trial in this matter began on March 15, 1999.) The State provided defense counsel with her name and last known address, together with her statement. Thurmond was present in the Sangamon County jail with defendant and alleged that she had conversations with defendant about the murder of Calcara and Nelson. The State provided defense counsel with all known prior convictions of Thurmond and made

Thurmond available for interview by defense counsel on March 14, 1999. On March 15, 1999, defendant filed a motion in limine regarding surprise witnesses. Defendant alleged an inadequate period of time to "investigate and prepare for cross-examination" of Thurmond. The trial court heard argument on the motion in limine on March 16, 1999. The trial court denied defendant's motion in limine regarding surprise witnesses; however, the trial court ordered the State to provide defense counsel with all known prior convictions of the witness, to make the witness available for interview by defense counsel, and to present the witness' testimony near the end of the State's case in chief. Moreover, defense counsel was to have "wide latitude in cross-examination" of the witness. Thurmond testified on March 18, 1999.

Supreme Court Rule 412 (134 Ill. 2d R. 412(a)(ii)(d)) requires that the State disclose to defense counsel any written or recorded statements and the substance of any oral statements made by the accused and a list of witnesses to the making and acknowledgment of such statements. This rule encompasses not only confessions but any statements made to anyone that might have a bearing on the defendant's guilt or innocence. People v. Steidl, 142 Ill. 2d 204, 228, 568 N.E.2d 837, 846 (1991). Compliance with the discovery provisions is mandatory and is accomplished only if the State notified the defense of the alleged incriminating statement or evidence promptly and in so doing exercised due diligence to ensure that the defendant received the information. Steidl 142 Ill. 2d at 228, 568 N.E.2d at 846.

In the present case, the prosecution interviewed Thurmond on March 11, 1999. Thurmond had been identified by another witness as an individual incarcerated

in the Sangamon County jail while defendant was also present in the jail. This witness had not identified Thurmond in earlier conversations with police authorities. The State conducted an immediate search for Thurmond, and provided defense counsel with her statement as soon as it had been prepared. We find no discovery violation committed by the State. This case is one in which the prosecutor was unaware of the existence of a witness and where there was no lack of due diligence by the prosecution.

Defendant relies on the decisions in People v. Heinzmann, 232 Ill. App. 3d 557, 597 N.E.2d.942 (1992), and Peoplle v. Millan, 47 Ill. App. 3d 296, 361 N.E.2d 823 (1977). However, those cases are predicated on their facts, which establish the State's conduct in not disclosing the relevant names bordered on bad faith. They are inapplicable to the present case, since there has been no discovery violation on the part of the State.

Here, we find no evidence of bad faith on the State's part. The trial court did not err when it allowed Thurmond to testify.

Defendant next argues that the trial court erred by refusing to instruct the jury on the offense of involuntary manslaughter. The instruction of the jury is a matter resting within the sound discretion of the trial court. Castillo, 188 Ill. 2d 536, 540, 723 N.E.2d 274, 277 (2000); People v. Hope, 168 Ill. 2d 1, 46, 658 N.E.2d 391, 411 (1995). An instruction is justified on a lesser offense where there is some evidence to support the giving of the instruction. Castillo, 188 Ill. 2d at 540, 723 N.E.2d at 277; People v. DiVincenzo, 183 Ill. 2d 239, 249, 700 N.E.2d 981, 987 (1998).

Where some evidence supports the instruction, the trial court's failure to give the instruction constitutes an abuse of discretion. Castillo, 188 Ill. 2d at 540, 723 N.E.2d at 277; DiVincenzo, 183 Ill. 2d at 249, 700 N.E.2d at 987.

A defendant commits involuntary manslaughter when, without lawful justification, he unintentionally kills an individual by recklessly performing acts that are likely to cause death or great bodily harm. Castillo, 188 Ill. 2d at 540, 723 N.E.2d at 277; DiVincenzo, 183 Ill. 2d at 250, 700 N.E.2d at 987; 720 ILCS 5/9-3(a) (West 1998). For purposes of involuntary manslaughter, a person acts recklessly when he consciously disregards a substantial and unjustifiable risk that his acts are likely to cause death or great bodily harm to another. Castillo, 188 Ill. 2d at 540-41, 723 N.E.2d at 277; DiVincenzo, 183 Ill. 2d at 250, 700 N.E.2d at 987; 720 ILCS 5/4-6 (West 1998).

An involuntary manslaughter instruction is not warranted where the nature of the killing, shown by either multiple wounds or the victim's defenselessness, reveals the inapplicability of the theory. DiVincenzo, 183 Ill. 2d at 251, 700 N.E.2d at 988; People v. Trotter, 178 Ill. App. 3d 292, 298, 533 N.E.2d 89, 92 (1988). The instruction is unnecessary when the nature of defendant's conduct is of such character so as to defeat any assertion of reckless or inadvertent conduct. Trotter, 178 Ill. App. 3d at 298, 533 N.E.2d at 92. In the present case, the victims suffered multiple gunshot wounds to the head. These multiple wounds show that the nature of the killing could not have been the result of recklessness.

Defendant relies on People v. Robinson, 163 Ill. App. 3d 754, 516 N.E.2d 1292 (1987). In Robinson, the defendant

asserted that, while trying to make peace with the decedent, with whom he had quarreled earlier, he saw the decedent's companion pull out a shotgun. The defendant grabbed for the gun and in the ensuing struggle the gun fell to the ground and discharged, killing the decedent. The appellate court held that an involuntary manslaughter instruction should have been given based on this evidence because a jury could have disbelieved defendant's claim of self-defense and still found his actions to be reckless. Robinson, 163 Ill. App. 3d at 778, 516 N.E.2d at 1310.

In the present case, we find no reasonable possibility that the acts of defendant could have been unintentional. Defendant shot Nelson in the head three times and Calcara in the head two times. Although defendant alleged that she struggled with Nelson, we cannot characterize the resulting fatal gunshot wounds to each victim as unintended. The evidence supports the conclusion that defendant intended to kill or do great bodily harm to the victims. Defendant has not pointed to any evidence indicating that her acts were merely inadvertent or reckless. Intentionally and deliberately aiming and firing a gun is not mere recklessness. Robinson, 163 Ill. App.3d at 779, 516 N.E.2d at 1310. The refusal of the involuntary manslaughter instruction was not in error.

Defendant next argues that the trial court abused its discretion in admitting testimony as to defendant's alleged drug transactions. According to defendant, this evidence was not relevant for any proper purpose and any possible probative value of this evidence was outweighed by its prejudicial effect.

The State argues that defendant has waived the alleged error because defendant did not raise this issue with adequate specificity in her motion for new trial.

"A written posttrial motion must set forth with sufficient specificity the errors relied upon for reversal or else such alleged errors are waived on review." People v. Young, 248 Ill. App. 3d 491, 503, 618 N.E.2d 1026, 1035 (1993). In her motion for new trial, defendant states, in part:

> "13. The [c]ourt erred by allowing the testimony of various witnesses as to prior bad acts involving the defendant's activity over the defendant's objection and by denying the defendant's motion in limine with respect thereto."

We find the omission of the names of the "various witnesses," and the subject matter of the alleged "prior bad acts" of the defendant and of defendant's "activity" so general as to defeat the purposes envisioned by section 116-1 of the Code of Criminal Procedure of 1963 (725 ILCS 5/116-1 (West 1998)). See People v. Heard, 187 Ill. 2d 36, 58, 718 N.E.2d 58, 71 (1999). The trial court did not abuse its discretion in admitting evidence of defendant's drug transactions as evidence of defendant's motive and intent to harm Calcara and Nelson. Warfield's testimony suggests that the reason for the killings was that defendant believed that Calcara stole $850 from the pocket of her coat, monies acquired through defendant's drug transactions. Evidence that the defendant was involved in drug dealings is clearly relevant to the establishment of a motive for defendant's killing of Calcara and Nelson.

In Steidl, a jury convicted the defendant of the murder of two individuals. Defendant's ex-wife testified to defendant's alleged drug transactions and defendant's ex-girlfriend testified that defendant told her that he had in the

past dealt cocaine to "all the bigwigs in Paris" and wanted to do so again. The testimony suggested that the reason for the killings was that one of the individuals murdered wanted to get out of a drug deal. The supreme court found that "[e]vidence that the defendant was involved in drug dealings with [a codefendant] is clearly relevant to the establishment of a motive for defendant's involvement in the killings." Steidl, 142 Ill. 2d at 230, 568 N.E.2d at 847.

Aside from Warfield's testimony about defendant's alleged drug transactions, defendant also maintains that the testimony of Phillip Bornstein (Bornstein) was prejudicial. Bornstein, a medical doctor of psychiatry, testified he examined defendant on December 17, 1998. It was Bornstein's opinion that defendant has a conduct disorder. Bornstein identified the various behaviors exhibited by defendant that contributed to his diagnosis, including a history of lying and stealing, violations of rules, truancy, selling drugs, and the shooting of these two individuals.

Because a psychiatrist customarily relies on statements made by an individual in forming a diagnosis, an expert must be allowed to repeat those statements if relevant to explaining the opinion to the jury. People v. Anderson, 113 Ill. 2d 1, 5, 495 N.E.2d 485, 490 (1986). We find the testimony regarding defendant's selling of drugs relevant to the basis of Bornstein's diagnosis and, further, the prejudicial effect of the evidence did not outweigh its probative value. Bornstein referenced defendant's drug selling solely in the context of multiple behaviors, offered by Bornstein in support of his diagnosis of a conduct disorder.

This evidence was introduced to show defendant's motive and the jury was properly instructed on the limited purpose for which the evidence was received. Illinois

Pattern Jury Instructions, Criminal, No. 3.14 (2d ed. 1981) (hereafter IPI Criminal 2d). The admission of evidence relating to defendant's alleged drug transactions was not error.

Last, defendant argues that the trial court erred in restricting defense counsel from cross-examining witness Brenda House, a detective with the Sangamon County Sheriff's department, concerning a statement made by defendant when such statement was admissible under the doctrine of completeness and would help explain defendant's actions. We note that the State argues, initially, that defendant has waived the alleged error because she did not argue the doctrine of completeness below. We decline to find waiver and address the merits of defendant's argument.

During cross-examination of House by defense counsel, the following colloquy occurred:

> "Q. Okay. And she told you that she wanted to give the gun to Mr. Calcara because he wanted a gun and he wanted to protect himself from Mr. Warfield?
>
> MR. SCHMIDT [(Assistant State's Attorney)]: Objection. That knowledge would come from Ms. Childs in the form of hearsay, a statement from Mr. Calcara.
>
> THE COURT: Sustained.
>
> MR. OTWELL [(Defense attorney)]: Judge, that goes to explain her actions.
>
> THE COURT: I've ruled on the objection. Proceed.".

Defense counsel then elicited from House that defendant told House that she gave Calcara the gun. Defendant argues that the trial court erred in not allowing House to testify that defendant told House that she gave Calcara the gun "because he wanted a gun and he wanted to protect himself from Mr. Warfield."

With regard to rulings limiting cross-examination, the scope of cross-examination rests largely in the discretion of the trial court, and a reviewing court will overturn its ruling only where there was an abuse of discretion that resulted in manifest prejudice to the defendant. People v. Patterson, 154 Ill. 2d 414, 463, 610 N.E.2d 16, 38 (1992). Our review of the testimony leads us to conclude that the trial judge acted within its discretion in limiting cross-examination of this witness. It was not error for the trial court to sustain the State's objection that "that knowledge would come from [defendant] in the form of hearsay, a statement from [Calcaral," While further clarification might have been permitted, precluding such testimony was not an abuse of discretion.

For the reasons stated above, we affirm the trial court's judgment.

Affirmed.

McCULLOUGH, J., with MYERSCOUGH and KNECHT, JJ. concurring.

2001 Ill. LEXIS 1329

People State of Illinois, respondent, v. Leanne Childs, petitioner.

No. 91997

SUPREME COURT OF ILLINOIS

2001 Ill. LEXIS 1329

October 3, 2001, Decided

PRIOR HISTORY: Leave to appeal, Appellate Court, Fourth District. (4-99-0496).

OPINION:

Petition for leave to appeal denied.